

## Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

DRAFTED BY L/EA:PMNORTON

APPROVED BY P - MR. HABIB

L - MR. HANSELL

- MR. BAKER

EA/K - MR. HURWITZ

L/UNA - MR. STEWART

S/S-O - SSTEINER

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P 082026Z JUN 77

FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK PRIORITY

INFO AMEMBASSY SEOUL PRIORITY

C O N F I D E N T I A L STATE 132298

EXDIS

E.O. 11652: GDS

TAGS: PFOR, UN, KS

SUBJECT: ATTEMPT BY U.S. CONGRESS TO SUBPOENA BANK  
RECORDS OF KOREAN UN MISSION

REFS: (A) USUN 1763; (B) SEOUL 4690

1. KOREAN AMBASSADOR TO U.S. KIM YONG-SIK CALLED ON  
UNDERSECRETARY HABIB FRIDAY AFTERNOON AND CONVEYED INFORMA-  
TION THAT BANK RECORDS OF KOREAN UN MISSION HAD BEEN SUB-  
POENAED BY HOUSE ETHICS COMMITTEE. DEPARTMENT CONTACTED  
COMMITTEE AND CONFIRMED THAT SUBPOENA HAD BEEN ISSUED.  
COMMITTEE HAS BEEN DEALING DIRECTLY WITH BANK. DEPARTMENT  
UNDERSTANDS THAT SUBPOENA HAS BEEN NARROWED TO COVER CASH  
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TRANSACTIONS ONLY AND THAT RETURN DATE ON SUBPOENA HAS  
BEEN DELAYED BY MUTUAL CONSENT.

2. MISSION SHOULD BE AWARE THAT SIMILAR ISSUE AROSE LAST  
FALL WHEN DEPARTMENT OF JUSTICE SUBPOENAED THE BANK  
RECORDS IN WASHINGTON OF KOREAN EMBASSY AND CERTAIN EMBASSY  
PERSONNEL. DEPARTMENT'S LEGAL ADVISER'S OFFICE AT THAT

TIME CAREFULLY EXAMINED THE QUESTION OF IMMUNITY OF SUCH RECORDS UNDER THE VIENNA CONVENTION AND UNDER CUSTOMARY INTERNATIONAL LAW. IT WAS DETERMINED THAT THE IMMUNITIES RELATING TO ARCHIVES AND DOCUMENTS OF A DIPLOMATIC MISSION AND THE PROPERTY OF A DIPLOMATIC AGENT DO NOT EXTEND TO A COMMERCIAL BANK'S RECORDS MAINTAINED BY THE BANK ITSELF FOR ITS OWN PURPOSES. RECORDS MAINTAINED BY THE EMBASSY AND ITS PERSONNEL WOULD, OF COURSE, BE IMMUNE FROM PROCESS AS WOULD FUNDS IN ACCOUNTS THEMSELVES.

3. KOREAN EMBASSY AND ITS ATTORNEYS MAINTAINED A CONTRARY VIEW OF THE IMMUNITY OF BANK'S RECORDS. NEGOTIATIONS BETWEEN THOSE ATTORNEYS AND JUSTICE RESULTED IN THE VOLUNTARY PROVISION BY EMBASSY OF CERTAIN EMBASSY BANK RECORDS TO JUSTICE DEPARTMENT WHICH, ACCORDINGLY, DID NOT FEEL IT NECESSARY TO PRESS THE SUBPOENA. THE SUBPOENA WAS NOT, RPT NOT, QUOTE QUASHED UNQUOTE, AS STATED IN PARA 4 REFTEL A.

4. DEPARTMENT BELIEVES THAT BANK RECORDS OF ACCOUNTS OF KOREAN UN O0SERVER OFFICE AND OFFICE STAFF, INCLUDING AMBASSADOR MOON, WOULD BE EVEN LESS LIKELY TO QUALIFY FOR IMMUNITY FROM CURRENT CONGRESSIONAL SUBPOENA. UNDER ARTICLE 15 OF THE 1947 US-UN HEADQUARTERS AGREEMENT, THE PRINCIPAL RESIDENT REPRESENTATIVES OF FULL UN MEMBERS, AND BY IMPLICATION THEIR MISSIONS, ARE ENTITLED TO THE SAME PRIVILEGES AND IMMUNITIES ACCORDED TO DIPLOMATIC ENVOYS ACCREDITED TO U.S. WHILE THERE ARE A FEW EXCEPTIONS, AN OBSERVER MISSION OF A FOREIGN GOVERNMENT AND ITS REPRESENTATIVES ARE ENTITLED ONLY TO FUNCTIONAL PRIVILEGES AND IMMUNITIES UNDER THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT (PUBLIC LAW 79-291) AND HENCE ARE NOT ENTITLED TO THE FULL RANGE OF PRIVILEGES AND IMMUNITIES ACCORDED TO DIPLOMATIC ENVOYS. OBSERVER MISSIONS REPRESENTING ENTITIES OTHER THAN FOREIGN GOVERNMENTS (E.G., INTERGOVERNMENTAL ORGANIZATIONS OR COMMUNITIES OF STATES) ARE NOT ENTITLED TO ANY PRIVILEGES AND IMMUNITIES UNDER U.S. LAW (AGAIN WITH A FEW EXCEPTIONS).

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SENTATIVES ARE ENTITLED ONLY TO FUNCTIONAL PRIVILEGES AND IMMUNITIES UNDER THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT (PUBLIC LAW 79-291) AND HENCE ARE NOT ENTITLED TO THE FULL RANGE OF PRIVILEGES AND IMMUNITIES ACCORDED TO DIPLOMATIC ENVOYS. OBSERVER MISSIONS REPRESENTING ENTITIES OTHER THAN FOREIGN GOVERNMENTS (E.G., INTERGOVERNMENTAL ORGANIZATIONS OR COMMUNITIES OF STATES) ARE NOT ENTITLED TO ANY PRIVILEGES AND IMMUNITIES UNDER U.S. LAW (AGAIN WITH A FEW EXCEPTIONS).

5. THE FACT THAT THE SUBPOENA WAS ORIGINATED BY A CONGRESSIONAL COMMITTEE AND NOT A COURT IS IMMATERIAL. THIS COMMITTEE HAS FULL LEGAL AUTHORITY TO ISSUE SUCH SUBPOENAS. THE MECHANICS OF ENFORCEMENT MIGHT DIFFER FROM THOSE OF A JUDICIAL SUBPOENA, BUT THIS WOULD NOT AFFECT THE CENTRAL ISSUE OF THE AMENABILITY OF THE RECORDS TO SUBPOENA.

6. DEPARTMENT WILL CONVEY THIS VIEW TO KOREAN EMBASSY

IN WASHINGTON. USUN MAY WISH TO DO LIKEWISE IN NEW YORK, AND AMBASSADOR SNEIDER SHOULD ALSO DRAW ON ABOVE IN HIS DISCUSSIONS WITH FOREIGN MINISTER PARK.

7. DEPARTMENT BELIEVES THAT FURTHER RESOLUTION OF THIS ISSUE SHOULD BE LEFT TO ROKG'S ATTORNEYS AND COUNSEL FOR THE CONGRESSIONAL COMMITTEE. FYI: WE PRESUME ROKG WILL CONSIDER CAREFULLY NEGOTIATING SOME SORT OF VOLUNTARY COMPLIANCE IN LIEU OF SUBMITTING TO THE SUBPOENA ITSELF. WE DO NOT, HOWEVER, BELIEVE IT OUR PROPER ROLE TO ADVISE THEM IN THIS RESPECT. END FYI. VANCE

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## Message Attributes

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**Disposition Comment:** 25 YEAR REVIEW  
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**To:** USUN NEW YORK  
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